UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

UNITED INTERNATIONAL
INVESTIGATIVE SERVICES, INC.[1]

Employer

and Case 21-RC-20102

INTERNATIONAL UNION OF COURT SECURITY
OFFICERS OF AMERICA,

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner and the Intervenor are, and each of them is, a labor organization within the meaning of

Section 2(5) of the Act and each seeks to represent certain employees of the Employer.[2]

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time U.S. Marshals Service (USMS) Credentialed/ Deputized court security officers assigned to courthouses within the geographical boundaries of the U.S. District Court of the Central District of California, currently located at U.S. Ninth Circuit Court of Appeals, 125 S. Grand Avenue, Pasadena, California; U.S. Ninth Circuit Court of Appeals, 21800 Oxnard Street, Woodland Hills, California; U.S. District Court, 312 North Spring Street, Los Angeles California; U.S. District Court and U.S. Bankruptcy Court, 255 East Temple Street, Los Angeles, California; U.S. District Court, 4100 Main Street, Riverside, California; U.S. District Court, 411 West Fourth Street, Santa Ana, California; U.S. Bankruptcy Court, 3420 Twelfth Street, Riverside, California; U.S. Bankruptcy Court, 21041 Burbank Boulevard, Woodland Hills California; and U.S. Bankruptcy Court, 1415 State Street, Santa Barbara, California; excluding all other employees, managers, senior lead court security officers, lead court security officers, office clerical employees, temporarily assigned employees, and

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[1] The name of the Employer appears as amended at the hearing.

[2] United Government Security Officers of America and its Local 74 currently serves as the collective-bargaining Representative of the employees in the petitioned-for unit. Intervenor status was granted at the hearing based on its prior certification as the collective-bargaining representative of the unit employees while they were employed by Employer's predecessor, General Security Services of America.

supervisors as defined in the Act.[3]

Two issues were raised in this matter: (1) whether the Petitioner is directly or indirectly affiliated with, or was rendered improper assistance from, an organization which admits to its membership, employees other than guards, and is, therefore, not a labor organization that may represent guards, pursuant to Section 9(b)(3)[4] of the Act; and (2) whether the employees in the bargained for unit are guards within the meaning of the Act. With respect to these issues, both the Employer and the Intervenor maintain that the Petitioner is either directly or indirectly affiliated with labor organizations which admit nonguards, and therefore, it cannot be certified to represent employees in the petitioned-for unit within the meaning of Section 9(b)(3) of the Act. These parties also contend that the employees in the petitioned for unit are guards within the meaning of the Act. The Petitioner disagrees with the positions taken by the Employer and the Intervenor regarding the foregoing issues.[5]

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[3] At the hearing, the parties stipulated that the unit is appropriate for collective-bargaining purposes.

[4] Section 9(b)(3) provides: "The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, that the Board shall not...(3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

[5] At the hearing, the Petitioner was unwilling to enter into a stipulation that the employees in the petitioned- for unit are guards

The record establishes that the Employer is a California corporation engaged in the business of providing security guard services primarily to government employers. The record reveals that on or about February or March 1999, a group of six of the Employer's court security officers employed at federal courthouses within the Central District formed a committee to discuss ways of improving their representation. The group decided to form the International Union of Court Security Officers of America, the petitioning labor organization herein, in an attempt to replace the Intervenor as their collective- bargaining representative.

In either February or March 1999, committee member and court security officer, Douglas Aschenbrenner ("Aschenbrenner"), instructed various unnamed court security officers to contact other unions to obtain information from the organizations regarding their possible representation of the Employer's court security officers. Aschenbrenner testified that he personally placed calls to the Teamsters Union and the AFL-CIO. As a result of his efforts, Aschenbrenner received a telephone message at work from Mike Liebig ("Liebig"), an attorney representative of the AFL-CIO and its affiliate, International Union of Police Associations ("IUPA") located in Alexandria, Virginia. Aschenbrenner returned Liebig's telephone call and during their discussion proceeded to schedule an in-person meeting. Besides their agreement to meet in-person, the record does

within the meaning of the Act, contending that employee status is not

not reveal what other topics Aschenbrenner and Liebig discussed during their initial telephone conversation.[6]

Sometime in March 1999, Aschenbrenner met with Liebig at the headquarters of POPA (a union for Los Angeles County Sheriff's Office employees classified as sergeants and higher) in Monterey Park, California. Also present at this meeting were five committee members of Petitioner, one member of POPA, and two members of IUPA. At the meeting, Liebig discussed the procedure for "breaking away" from the Intervenor and also explained that Petitioner needed to file showing of interest cards with the NLRB in order to facilitate this process. The record reveals that at the meeting, Aschenbrenner inquired as to how showing of interest cards could be obtained. In response to the inquiry, Liebig offered to furnish showing of interest cards to Petitioner. Aschenbrenner testified that he received the shipment of cards at his place of employment one month later. The record shows no involvement by Liebig, members of IUPA, or the AFL-CIO in obtaining signatures for the showing of interest cards.

A few weeks following their first meeting, Aschenbrenner and a few other of Petitioner's committee members met with Liebig over dinner in Santa Ana, California. At the meeting, Liebig introduced the committee

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at issue since there is no evidence of affiliation.

[6] The record establishes that Petitioner had contact with at least five other labor organizations during this time period: IUPA, COPS, Teamsters, Police Officers Law Enforcement Association, and the National Association of Law Enforcement. Nonetheless, testimony at

members to Marianne Reinhold, an attorney of the law firm currently undertaking representation of Petitioner. Further, Liebig indicated at this meeting that he no longer desired to be involved with Petitioner's representation efforts on the ground that his involvement would constitute tampering.

The record discloses that 5 to 6 weeks prior to the September 10th hearing in this matter, Aschenbrenner initiated a telephone call to Liebig for the purpose of ascertaining why the representation petition hearing in this matter was being delayed. The record does not reveal what other subjects, if any, were discussed during this telephone conversation. Since that time, Aschenbrenner testified that he has not had any communication with Liebig, or representatives of either IUPA or the AFL-CIO.

The record further reveals that none of the six committee members of Petitioner holds an official title with IUPA or the AFL-CIO. Additionally, Petitioner has never applied for affiliation with IUPA or the AFL-CIO. Finally, Petitioner has not received any assistance from these organizations with regard to the formation of its constitution and by-laws.

Based on the foregoing, the Employer and Intervenor contend that unlawful affiliation exists between Petitioner and IUPA as reflected by the assistance rendered to this organization by Liebig. Contrary to the Employer's

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the hearing centered almost exclusively on the relationship between

and Intervenor's contention, the foregoing facts do not support a conclusion that the Petitioner is directly or indirectly affiliated with IUPA, or any other labor organization which admits to its membership persons other than guards.

It is well-established that Section 9(b)(3) of the Act imposes a limitation on the Board's authority to establish bargaining units. Section 9(b)(3) of the Act states in relevant part that, "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization . . . is affiliated directly or indirectly with an organization which admits to membership employees other than guards." In interpreting this provision, the Board has held that assistance provided to a guard union during the formative stages of its development by a nonguard union does not necessarily establish affiliation between the unions. Wells Fargo Guard Services, 236 NLRB 1196 (1978). Although the Board has permitted substantial latitude when the assistance rendered occurs during the guard union's formative stages, indirect affiliation will be found, nonetheless, when the assistance rendered continues beyond the formative stages and under circumstances which suggest that the guard union lacks freedom to formulate its own policies and to decide its own course of action. Id. at 1197; Stewart-Warner Corp., 273 NLRB 1736 (1985).

Petitioner and IUPA.

In the present matter, the record clearly establishes that Petitioner possesses no formal or direct affiliation with IUPA or the AFL-CIO. Testimony at the hearing evidenced, for example, that Petitioner has never applied for affiliation with either of these organizations. Hence, such evidence diffuses any claim that Petitioner is *directly* affiliated with these groups. Brinks Inc., 274 NLRB 970, 971 (1985).

While the record does establish that IUPA's attorney Liebig rendered assistance to Petitioner, the facts at hand also militate against a finding of indirect affiliation. For example, the record illustrates that the sum total of the assistance Liebig provided Petitioner consisted of the following: (1) advising Petitioner on one occasion as to the procedures to follow for establishing an independent union; (2) shipping showing of interest cards to Petitioner; and (3) introducing Petitioner to an attorney to assist them with organizational matters. Assistance of this sort has routinely been declared by the Board to constitute insufficient evidence of indirect affiliation. Westinghouse Electric Corp., 96 NLRB 316 (1951); The Midvale Co.,

114 NLRB 372 (1955); Bonded Armored Carrier, Inc., 195 NLRB 346 (1972).

Furthermore, Liebig's assistance, marginal, at best, was confined to a time when Petitioner was in its formative stages of development. There is no evidence in the record which suggests that Liebig played any role in formulating Petitioner's policies and directing its course of action subsequent to divorcing himself from Petitioner's affairs at his final meeting with the group sometime in March 1999.[7] In fact, as Aschenbrenner testified, the law firm Petitioner was introduced at the final meeting in March 1999 has handled Petitioner's affairs ever since that time. Following this final meeting in March 1999, Liebig's only contact with Petitioner occurred 5 to 6 weeks prior to the September 10th hearing where he fielded a telephone call from Aschenbrenner concerning the status of the hearing. Finally, there is nothing in the record which demonstrates the prospect of any future assistance by Liebig, IUPA, or the AFL-CIO. The record evidence establishes that Petitioner is apparently free to formulate its own policies and decide its own course of action with complete independence of control from IUPA, the AFL-CIO or their representatives. International Harvester Co., 81 NLRB 374, 376 (1949); Wells Fargo Guard Services,

[7] Likewise, I reject Intervenor's apparent argument that the use of showing of interest cards after July 10, 1999 belies Liebig's separation from Petitioner. The mere fact that Gerald L. Westre, the president of Intevenor, had a showing of interest card on July 10 does not suggest any continued involvement by Liebig with the affairs of Petitioner.

236 NLRB 1196, 1197 (1978). Based on the above, I find that no prohibited indirect affiliation exists between Petitioner and either IUPA, or the AFL-CIO.

In its brief, the Employer claims that the following facts support a finding of affiliation: (1) Petitioner's meeting with Mr. Liebig at IUPA's meeting hall[8]; (2) Liebig's introduction of Petitioner to its current legal representation; and (3) Petitioner's receipt of membership interest cards bearing an IUPA logo and an IUPA return address. As made clear by Board decisions cited, the facts highlighted by the Employer do not give rise to a viable claim of improper affiliation. See, e.g., International Harvester Co., 81 NLRB 374 (1949) (no indirect affiliation when guard union, in electing its officers, used ballots which bore name of nonguard union); Ingersoll-Rand Co., 119 NLRB 601 (1957) (no indirect affiliation when assistance limited to, inter alia, permitting nonguard meeting hall to be used as a mailing address); The Midvale Co., 114 NLRB 372 (1955) (finding no indirect affiliation

[8] The Employer mistakenly asserts in its brief that Petitioner met with Liebig at an IUPA meeting hall located in Monterey Park, California. As indicated above, the meeting to which the Employer refers occurred at POPA headquarters. Assuming arguendo that the meeting took place at a nonguard union's meeting hall as the Employer suggests, this fact still would not support a finding of affiliation. International Harvester Co., 81 NLRB 374 (1949). The same holds true with respect to the Employer's false assertion that the showing of interest cards bore an IUPA return address. Ingersoll-Rand Co., 119 NLRB 601 (1957).

where assistance consisted of providing advice concerning organization, recommendation of an attorney, use of meeting hall and the mimeographing of membership card forms).[9]

The Employer's citation to Stay Security, 311 NLRB 252 (1993) and International Harvester Co., 145 NLRB 1747 (1964) are distinguishable. First, Stay Security concerns the applicability of the contract-bar rules to a petition filed by a guard union, and therefore has no bearing on either of the issues currently under consideration. Similarly, the reference to International Harvester Co. is inconsequential because it is distinguishable from the present matter on its facts. Unlike International Harvester Co., there is no evidence in the instant case that financial assistance was rendered by a nonguard union, no evidence that Petitioner continued to allow a nonguard union to participate in its affairs, and no evidence that Petitioner allowed a nonguard union to act as its negotiator during negotiations with the Employer.

With regard to the second issue, whether the court security officers in the bargained-for unit are guards within the meaning of Section 9(b)(3) of the Act, inasmuch as the Employer's court security officers' work duties require them to protect federal courthouse property in the Central District, as well as federal court employees employed therein, I find that these employees fall within

[9] The Intervenor raises similar facts in its brief which do not show affiliation.

the definition of "guards" set forth in the Act. Brink's Inc. 272 NLRB 868 (1985); Brink's Inc., 226 NLRB 1182 (1976); Teamsters Local 71 (Wells Fargo), 221 NLRB 1240 (1975); Teamsters Local 639 (Dunbar Armored Express), 211 NLRB 687 (1974).

There are approximately 134 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which

commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by: **INTERNATIONAL UNION OF COURT SECURITY OFFICERS OF AMERICA; or by UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA AND ITS LOCAL 74; or by neither labor organization.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before October 4, 1999. No extension of time to file the list shall be granted, except in extraordinary circumstances, nor

shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices to Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to file the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 10570. This request must be received by the Board in Washington by 5 p.m., EDT, on October 12, 1999.

Dated at Los Angeles, California, this 27th day of September, 1999.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

401-2575-2875